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10/659,552	09/10/2003	Anthony T. D'Amico	DAT104B	3096

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EXAMINER	
BRANDT, ADAM CURTIS	
ART UNIT	**PAPER NUMBER**
3771	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/659,552	D'AMICO, ANTHONY T.	
	Examiner	Art Unit	
	Adam Brandt	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28,30 and 31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23,25,26,28,30 and 31* is/are rejected.

7)☒ Claim(s) *24, 27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 November 2006* is/are: a)☒ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is responsive to the amendment filed on 11/27/2006. As directed by the amendment, claims 1,3,4,7,11,13,15,17,21,30 and 31 were amended. Claim 29 as cancelled. No claims were added. Thus claims 1-28, 30 and 31 are presently pending in the application

Allowable Subject Matter

2. The indicated allowability of claims 23, 25, 26, 28 is withdrawn in view of the newly discovered reference(s) to Miller (1,205,649) and Yellin (2,633,125). Rejections based on the newly cited reference(s) follow. The Examiner apologizes for the inconvenience. This office action is made as a Non-final action.

Drawings

3. The drawings were received on 11/27/2006. These drawings are accepted.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2-8, 11-16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 is dependent on claim 29, which has been cancelled by the Applicant.

Therefore, claim 2 is rendered indefinite and cannot be understood. All claims depending from claim 2 are indefinite as well.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 9 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Powlan (3,888,243).

As to claim 1, Powlan discloses a traction device for use on a support surface (15, frame of bed)comprising a body contacting assembly (connected to 28 as seen in figure 1) adapted to releaseably contact an anatomical region of a patient; and tractive force exertion apparatus (10) capable of exerting tractive force on the body contacting assembly, the tractive force exertion apparatus including a gas spring (40;65) member having an upper end and a lower end (40 has upper and lower end; 65 has upper and lower end; Both can be seen in figure 2), the gas spring member variable between an extended rest position and a retracted force exerting position (column 2, lines 12-21 and column 2, line 65 to column 3, line 17); and means for retracting the gas spring member into the force retracting position (52 and 54 permit gas to enter to move 40 back and forth; 68 and 58 permit gas to enter to move 65 back and forth); a tractive force transferring system (28) connected between the body connecting assembly and the tractive force extension apparatus.

As to claim 9, Powlan discloses in figure 1 the tractive force transferring means is mounted to the support surface (15, frame of bed).

As to claim 30, Powlan discloses a traction device for use on a support surface (15, frame of bed) comprising a body contacting assembly (connected to 28 as seen in figure 1) adapted to releasably contact an anatomical region of a patient; tractive force exertion apparatus (10) capable of exerting tractive force on the body contacting assembly, the tractive force exertion apparatus including a gas spring (40;65) member having an upper end and a lower end (40 has upper and lower end; 65 has upper and lower end; Both can be seen in figure 2), the gas spring member variable between an extended rest position and a retracted force exerting position (column 2, lines 12-21 and column 2, line 65 to column 3, line 17); a tractive force transferring system comprising a tension line (28) having a first end and a second end, the first end connected to the body contacting assembly (loop near proximal end of 28 as seen in figure 2) the second end attached to the tractive force exerting apparatus (inside 65).

8. Claims 17-22, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (1,205,649).

As to claim 17, Miller discloses a traction device for use on a support surface comprising a body contacting assembly (46;47) adapted to releasably contact an anatomical region of a patient; a tractive force exerting apparatus capable of exerting force on the body contacting assembly, the tractive force exerting apparatus including a gas spring member (37) variable

between an extended rest position and a retracted force exerting position (this occurs when bed is in a 'V' position), the gas spring having an upper end (connecting to 29) and an opposed lower end (connecting to bottom of 21); an elongate member (21;31) adjustably attached to a lower end of the gas spring; a truss (29) having a first end region and a second end region, the first end region located a spaced distance from the lower end of the gas spring (end farther from head of patient) and the second end region (end closer to head of patient) located proximate to the elongate member, wherein the truss is in pivotal connection with the elongate member, wherein the gas spring , the elongate member and truss cooperatively forming a triangular assembly (see figure 1); a tractive force transferring system (all components associated with 50), the tractive force transferring system including a tension line (50) having a first end (connected to harness around face) and a second end (connected underneath table to pulley 52), the first end connected to the body contacting assembly, the second end connected to the tractive force exerting apparatus.

As to claim 18, Miller discloses the traction device wherein the traction force exerting assembly comprises a pulley mechanism (52) located proximate to an upper end of the gas spring (37), wherein the tension line (50) extends through the pulley mechanism from a point of attachment with the body contacting assembly (where 50 connects to 47) to a point of attachment with the elongate member of the tractive force exerting mechanism (21;31, see figure 3).

As to claim 19, Miller discloses the traction device wherein the tractive force transferring means (51) is mounted to the support surface (29).

As to claim 20, Miller discloses the traction device wherein the support surface (29) is a table, wherein the traction device further comprises at least one mounting bracket affixed to the table (top end of 37), the tractive force exertion apparatus mounted on the mounting bracket (see figure 1).

As to claim 21, Miller discloses a traction device for use on a support surface comprising a body contacting assembly (46;47) adapted to releasably contact an anatomical region of a patient; a tractive force exerting apparatus capable of exerting force on the body contacting assembly, the tractive force exerting apparatus including a gas spring member (37) variable between an extended rest position and a retracted force exerting position (this occurs when bed is in a 'V' position), the gas spring having an upper end (connecting to 29) and an opposed lower end (connecting to bottom of 21); an elongate member (21;31) adjustably attached to a lower end of the gas spring; a truss (29) having a first end region and a second end region, the first end region located a spaced distance from the lower end of the gas spring (end farther from head of patient) and the second end region (end closer to head of patient) located proximate to the elongate member, wherein the truss is in pivotal connection with the elongate member a tractive force transferring system (all components associated with 50), the tractive force transferring system including a tension line (50) having a first end (connected to harness around face) and a second end (connected underneath table to pulley 52), the first end connected to the body contacting assembly, the second end connected to the tractive force exerting apparatus (see figure 1); wherein traction force exerting assembly comprises a pulley mechanism (52) located

proximate to an upper end of the gas spring (37), wherein the tension line (50) extends through the pulley mechanism from a point of attachment with the body contacting assembly (where 50 connects to 47) to a point of attachment with the elongate member of the tractive force exerting mechanism (21;31, see figure 3); and wherein the pulley assembly further includes at least one additional pulley (there are two pulleys labeled 52) and an adjustable triangular mounting assembly (pulleys rotate therefore are adjustable), the adjustable pulley rotatably mounted on an adjustable triangular mounting assembly (26,31,37 form a triangular assembly), the triangular mounting assembly connected to either the elongate rod or the truss (29, connected to the truss) such that the at least one additional pulley is position at a spaced distance from the member to which it is connected (pulley is mounted to 29 but is spaced from the surface of 29 by bracket 54).

As to claim 22, Miller discloses in figure 1 the body contacting assembly (47;46;44) is configured to engage a body proximate to at least one of the cervical region or lumber region.

As to claim 31, Miller discloses the traction device comprising a tension release line, the tension release line (53) having a first end connected to the tension line and a second end configured to releasably contact an appendage of a patient utilizing the device (53 has a knob that is configured for a hand to releasably contact while in use).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powlan (3,888,243).

As to claim 10, Powlan discloses in figure 1 the traction device wherein the support surface is bed frame(15), wherein the traction device further comprises at least one mounting bracket affixed to the bed frame (along the horizontal bottom portion of 15), the tractive force exertion apparatus mounted on the mounting bracket. Powlan fails to disclose the bed frame is a table. A bed frame has 4 supporting legs and a horizontal surface supported by the 4 legs that is capable of holding substantial weight. A bed frame is capable of doing the job a table in this instance therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a bed frame for a table.

12. Claims 23, 25, 26, 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (1,205,649) in view of Yellin (2,633,125).

As to claim 23, Miller discloses a traction device for use on a support surface comprising a body contacting assembly (46;47) adapted to releasably contact an anatomical region of a patient; a tractive force exerting apparatus capable of exerting force on the body contacting assembly, the tractive force exerting apparatus including a gas spring member (37) variable between an extended rest position and a retracted force exerting position (this occurs when bed is in a 'V' position), the gas spring having an upper end (connecting to 29) and an opposed lower end (connecting to bottom of 21); an elongate member (21;31) adjustably attached to a lower end of the gas spring; a truss (29) having a first end region and a second end region, the first end region located a spaced distance from the lower end of the gas spring (end farther from head of patient) and the second end region (end closer to head of patient) located proximate to the elongate member, wherein the truss is in pivotal connection with the elongate member a tractive force transferring system (all components associated with 50), the tractive force transferring system including a tension line (50) having a first end (connected to harness around face) and a second end (connected underneath table to pulley 52), the first end connected to the body contacting assembly, the second end connected to the tractive force exerting apparatus (see figure 1); a tension release mechanism (53), the tension release mechanism actionable on the tension line to release tractive force.

Miller fails to disclose the tension release mechanism including a motorized assembly actionable on the tension line to release on the tension and a power supply for the motorized assembly. Yellin discloses a traction device used on the cervical portion of the body that

employs a motor to apply and release force delivered via a tension line. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller with motorized tension release of Yellin in order to automate the traction application process.

As to claim 25, Miller discloses the traction device wherein the support surface (29) is a table, wherein the traction device further comprises at least one mounting bracket affixed to the table (top end of 37), the tractive force exertion apparatus mounted on the mounting bracket (see figure 1).

As to claim 26, Miller discloses the traction device wherein the traction force exerting assembly comprises a pulley mechanism (52) located proximate to an upper end of the gas spring (37), wherein the tension line (50) extends through the pulley mechanism from a point of attachment with the body contacting assembly (where 50 connects to 47) to a point of attachment with the elongate member of the tractive force exerting mechanism (21;31, see figure 3).

As to claim 28, Miller discloses the traction device wherein the pulley assembly further includes at least one additional pulley (there are two pulleys labeled 52) and an adjustable triangular mounting assembly (pulleys rotate therefore are adjustable), the adjustable pulley rotatably mounted on an adjustable triangular mounting assembly (26,31,37 form a triangular assembly), the triangular mounting assembly connected to either the elongate rod or the truss (29, connected to the truss) such that the at least one additional pulley is position at a spaced

distance from the member to which it is connected (pulley is mounted to 29 but is spaced from the surface of 29 by bracket 54).

Response to Arguments

13. Applicant's arguments with respect to claims 1, 17-20, 22, and 31 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

14. Claims 24 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Powlan (US 3,616,795) and Ward (3,765,411) relate to cervical traction devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Brandt whose telephone number is 571-272-7199. The examiner can normally be reached on 8:30 AM to 4:30 PM; Mon thru Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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1/19/07